

## **IC 21-5-12**

### **Chapter 12. Authority and Procedure to Lease to a Private Holding Company**

#### **IC 21-5-12-1**

##### **School corporations authorized to lease school buildings; maximum term of lease; joint leases**

Sec. 1. (a) Any school corporation shall have the power to lease a school building or buildings for the use of such school corporation or of any joint or consolidated school district of which it is a part or to which it contributes. However, no such contract of lease shall be entered into for a period of more than fifty (50) years, nor unless there shall first be filed with the body or bodies vested with control of the school corporation a petition therefor signed by fifty (50) or more patrons of such school corporation, and the board of school trustees, township board, or the body or bodies vested with such control shall have, after investigation, determined that a need exists for such school building.

(b) The term "school building", as used in this chapter, shall be construed to mean any building used as a part of or in connection with the operation of schools and shall include the site therefor, the equipment thereof and appurtenances thereto such as heating facilities, water supply, sewage disposal, landscaping, walks, drives, and playgrounds, except that no building shall be constructed under this chapter which is designed for and to be used exclusively for interschool athletic contests.

(c) If two (2) or more school corporations propose to enter into such a lease contract jointly, then joint meetings of the boards of school trustees, township boards, or other body or bodies having control may be held, but no action taken shall be binding on any such school corporation unless approved by a majority of the body representing such corporation. Any lease contract executed by two (2) or more school corporations as joint lessees shall set out the amount of the aggregate lease rental to be paid by each, which may be as agreed upon, but there shall be no right of occupancy by any lessee unless the aggregate rental is paid as stipulated in the lease contract. All rights of joint lessees under the lease contract shall be in proportion to the amount of lease rental paid by each.

*(Formerly: Acts 1957, c.275, s.1.) As amended by P.L.8-1987, SEC.71.*

#### **IC 21-5-12-2**

##### **Leases or options to purchase with corporations or religious organizations**

Sec. 2. Any school corporation or corporations may enter into a contract of lease or lease with option to purchase under the provisions of this chapter with a corporation organized under the laws of the state of Indiana, or duly admitted to do business in the state of Indiana, or with a religious organization (or its agent) which is exempt from federal income taxation under section 501 of the

Internal Revenue Code.

*(Formerly: Acts 1957, c.275, s.2.) As amended by Acts 1979, P.L.225, SEC.1.*

### **IC 21-5-12-3**

#### **Options to renew lease; options to purchase property; religious organizations**

Sec. 3. (a) Except as provided in subsection (d), all contracts of lease shall provide that such school corporation or corporations shall have an option to:

- (1) renew the lease for a further term on like conditions; and
- (2) purchase the property covered by the lease contract;

the terms and conditions of the purchase to be specified in the lease, subject to the approval of the department of local government finance.

(b) If the option to purchase the property covered by the lease is exercised, such school corporation or corporations, for the purpose of procuring funds to pay the purchase price thereof, may issue and sell bonds under the provisions of the general statute governing the issue and sale of bonds of such school corporation or corporations. The purchase price may not be more than the purchase price set forth in the lease contract with:

- (1) two percent (2%) thereof as prepayment penalty for purchase within the first five (5) years of the lease term; or
- (2) one percent (1%) thereof as prepayment penalty for purchase in the second five (5) years of the lease term;

and thereafter the purchase shall be without prepayment penalty.

(c) However:

- (1) if the school corporation has not or corporations have not exercised an option to purchase the property covered by the lease contract at the expiration of the lease contract; and
- (2) upon the full discharge and performance by the school corporation of its or corporations of their obligations under the lease contract;

the property covered by the lease contract shall thereupon become the absolute property of the school corporation or corporations and the lessor corporation shall execute proper instruments conveying to the school corporation or corporations good and merchantable title thereto.

(d) If a school corporation that is located in a county having a population of more than thirty-nine thousand six hundred (39,600) but less than forty thousand (40,000) enters into a contract of lease with a religious organization or the organization's agent as authorized under section 2 of this chapter, the contract of lease is not required to include on behalf of the school corporation an option to purchase the property covered by the lease contract, but must include an option to renew the lease. In this case the property covered by the lease contract is not required to become the absolute property of the school corporation as provided in subsection (c).

*(Formerly: Acts 1957, c.275, s.3.) As amended by P.L.169-1991,*

*SEC.1; P.L.12-1992, SEC.120; P.L.90-2002, SEC.453.*

#### **IC 21-5-12-4**

##### **Plans and specifications of proposed buildings; submission for approval; application of IC 4-21.5**

Sec. 4. (a) The lessor corporation proposing to build a school building or buildings, including the necessary equipment and appurtenances to the building or buildings, shall submit to the lessee or lessees, prior to the execution of a contract of lease, preliminary plans, specifications, and estimates for the building, or buildings. Final plans and specifications shall be submitted to the state department of health, state fire marshal, and other agencies designated by law to pass on plans and specifications for school buildings. These final plans and specifications shall be approved by those agencies in writing and by the lessee or lessees prior to the construction of the school building or school buildings.

(b) IC 4-21.5 does not apply to the formulation, issuance, or administrative review (but does apply to the judicial review and civil enforcement) of an approval by an agency under subsection (a).

*(Formerly: Acts 1957, c.275, s.4.) As amended by P.L.59-1988, SEC.9; P.L.2-1989, SEC.21; P.L.35-1990, SEC.40; P.L.2-1992, SEC.737.*

#### **IC 21-5-12-5**

##### **Responsibility for taxes, assessments, insurance, and repairs**

Sec. 5. Such contract of lease may provide that as a part of the lease rental for such school building or buildings the lessee or lessees shall agree to pay all taxes and assessments levied against or on account of the leased property, to maintain insurance thereon for the benefit of the lessor corporation and to assume all responsibilities for repair and alterations thereon or thereto during the term of such lease.

*(Formerly: Acts 1957, c.275, s.5.)*

#### **IC 21-5-12-6**

##### **Contracts of lease before site acquisition or construction of building authorized; conditions**

Sec. 6. Such school corporation or corporations may, in anticipation of the acquisition of a site and the construction and erection of such a school building or buildings, including the necessary equipment and appurtenances thereof, make and enter into a contract of lease with such lessor corporation subject to the approval of the department of local government finance prior to the actual acquisition of such site and the construction and erection of such building or buildings, but such contract of lease so entered into shall not provide for the payment of any lease rental by the lessee or lessees until the completion of such building or buildings ready for occupancy, at which time the stipulated lease rental may begin. The lessor corporation in such contract of lease shall furnish a bond to the approval of such lessee or lessees conditioned on the final

completion of such building or buildings within a period not to exceed one (1) year from the date of the execution of such contract of lease, unavoidable delays excepted.

*(Formerly: Acts 1957, c.275, s.6.) As amended by P.L.90-2002, SEC.454.*

#### **IC 21-5-12-7**

##### **Notice and hearing; proposed lease; execution of lease; limitation of actions to contest validity of lease**

Sec. 7. (a) When the lessor corporation and the school corporation or corporations have agreed upon the terms and conditions of any lease proposed to be entered into pursuant to the terms and conditions of this chapter and before the final execution of such lease a notice shall be given by publication to all persons interested of a hearing to be held before the board of school trustees, the township board, or the body or bodies vested with authority to approve the lease, or a joint meeting thereof, which hearing shall be on a day not earlier than ten (10) days if new construction is proposed or thirty (30) days if improvement or expansion is proposed after the publication of such notice. The notice of such hearing shall be published one (1) time in a newspaper of general circulation printed in the English language in the school corporation, or one (1) of the same if the proposed lease be a joint lease, or if no such paper be published therein, then in any newspaper of general circulation published in the county. Such notice shall name the day, place, and hour of such hearing and shall set forth a brief summary of the principal terms of the lease agreed upon, including the location, name of the proposed lessor corporation and character of the property to be leased, the rental to be paid, and the number of years the contract is to be in effect. The proposed lease, drawings, plans, specifications, and estimates for such school building or buildings shall be available for inspection by the public during said ten (10) day or thirty (30) day period and at said meeting. All persons interested shall have a right to be heard at the time fixed, upon the necessity for the execution of such lease and whether the rental provided for therein be paid to the lessor corporation is a fair and reasonable rental for the proposed building. Such hearing may be adjourned to a later date or dates, and within thirty (30) days following the termination of such hearing the board of school trustees, township board, or governing body or bodies of such school corporation or corporations may by a majority vote of all its members either authorize the execution of such lease as originally agreed upon or may make such modifications therein as may be agreed upon with such lessor corporation, but in no event shall the lease rentals as set out in the published notice be increased. The cost of the publication of the notice shall be borne by lessor corporations.

(b) In the event the execution of the lease as originally agreed upon, or as modified by agreement, is authorized by such board of school trustees, township board, or governing body or bodies of such school corporation or corporations, such board or governing body

shall give notice of the signing of said contract by publication one (1) time in a newspaper of general circulation printed in the English language in the school corporation, or one (1) of the same if the proposed lease be a joint lease, or if no such newspaper be published therein, then in any newspaper of general circulation published in the county. Ten (10) or more taxpayers in such school corporation or corporations, who will be affected by the proposed lease and who may be of the opinion that no necessity exists for the execution of such lease, or that the proposed rental provided for therein is not a fair and reasonable rental, may file a petition in the office of the county auditor of the county in which such school corporation or corporations is located, within thirty (30) days after publication of notice of the execution of such lease, setting forth their objections thereto and facts showing that the execution of the lease is unnecessary or unwise, or that the lease rental is not fair and reasonable as the case may be. Upon the filing of any such petition, the county auditor shall immediately certify a copy thereof, together with such other data as may be necessary in order to present the questions involved, to the department of local government finance, and upon the receipt of such certified petition and information, the department shall fix a time and place for the hearing of such matter which shall not be less than five (5) nor more than thirty (30) days thereafter, and said hearing shall be in the school corporation or corporations, or in the county where such school corporations are located. Notice of the hearing shall be given by the department of local government finance to the members of the board of school trustees, township board, or governing body or bodies of such school corporation or corporations, and to the first ten (10) taxpayer-petitioners upon such petition by a letter signed by the commissioner or deputy commissioner of the department, and enclosed with full prepaid postage addressed to such persons at their usual place of residence, at least five (5) days before the date of such hearing. The decision of the department of local government finance on such appeal, upon the necessity for the execution of said lease and as to whether the rental is fair and reasonable, shall be final.

(c) No action to contest the validity of the lease or to enjoin the performance of any of the terms and conditions of the lease shall be instituted at any time later than thirty (30) days after publication of notice of the execution of the lease by the board of school trustees, township board, or governing body or bodies of such school corporation or corporations; or if an appeal has been taken to the department of local government finance, then within thirty (30) days after the decision of the department.

*(Formerly: Acts 1957, c.275, s.7.) As amended by Acts 1981, P.L.208, SEC.7; P.L.8-1987, SEC.72; P.L.90-2002, SEC.455.*

#### **IC 21-5-12-8**

#### **Lessor corporation required to own construction site land; sale of land by school corporations to lessor corporation**

Sec. 8. The lessor corporation shall acquire, own and hold in fee

simple the land on which such building or buildings is to be erected. Any school corporation proposing to lease such school building or buildings, either alone or jointly with another school corporation, and owning the land on which it desires that such building or buildings be erected may and is hereby authorized to sell and transfer to the lessor corporation such land in fee simple. Before such sale may take place, the governing body of the school corporation shall file a petition with the circuit court of the county in which the school corporation is located, requesting the appointment of three (3) disinterested freeholders of the school corporation as appraisers to determine the fair market value of such land. Upon their appointment, the three (3) appraisers shall proceed to fix the fair market value of such land and shall report the amount so fixed to the circuit court within two (2) weeks from the date of their appointment. The school corporation may then sell such land to the lessor corporation for an amount not less than the amount so fixed as the fair market value by the three (3) appraisers, which amount shall be paid in cash upon delivery of the deed by the school corporation to the lessor corporation; Provided, however, That if such land was acquired by the school corporation within three (3) years immediately preceding the date of the filing of the petition with the circuit court, such land may not be sold for an amount less than the amount paid by the school corporation for such land.

*(Formerly: Acts 1957, c.275, s.8.)*

#### **IC 21-5-12-9**

##### **Appropriations to pay lease rentals**

Sec. 9. Any school corporation which shall execute a lease contract under the provisions of this chapter shall annually appropriate and pay out of the debt service fund sufficient moneys to pay the lease rental stipulated to be paid by such school corporation in such lease contract. Such appropriation and rate shall be reviewable by other bodies vested by law with such authority to ascertain that the levy is sufficient to raise the amount required to meet the rental of such lease contract.

*(Formerly: Acts 1957, c.275, s.9; Acts 1967, c.352, s.1.) As amended by P.L.2-1988, SEC.705.*

#### **IC 21-5-12-10**

##### **Tax exemptions**

Sec. 10. All school buildings leased by a lessor corporation so contracting with such school corporation or corporations under the provisions of this chapter shall be exempt from all state, county, and other taxes. Provided, however, that the rental paid to a lessor corporation under the terms of such a contract of lease shall be subject to all applicable taxes under the laws of this state.

*(Formerly: Acts 1957, c.275, s.10.) As amended by P.L.2-1988, SEC.706.*

#### **IC 21-5-12-11**

**Supplemental effect of chapter**

Sec. 11. This chapter is intended to be and shall be construed as being supplemental to all other laws covering the acquisition, use, and maintenance of school buildings by school corporations. Provided, that as to school buildings constructed or leased pursuant to the provisions of this chapter, it shall not be necessary to comply with the provisions of other laws concerning the acquisition, use, and maintenance of school buildings by school corporations except as specifically required in this chapter.

*(Formerly: Acts 1957, c.275, s.11.) As amended by P.L.2-1988, SEC.707.*

**IC 21-5-12-12****Bonds and other securities; sale; authorized investments**

Sec. 12. (a) Any corporation qualifying as a lessor corporation under this chapter may issue and sell bonds and other securities. Mortgage bonds issued by a lessor corporation that are a first lien on the leased property shall be considered legal and proper investments for state banks and trust companies, insurance companies, and fiduciaries.

(b) Bonds and other securities issued by a lessor corporation need not be sold under IC 5-1-11, and approval of the securities commissioner is not required in connection with the issuance and sale of the bonds.

*As added by P.L.59-1988, SEC.10.*

**IC 21-5-12-13****Termination of lease; return of money by lessor corporation; deposit**

Sec. 13. (a) Upon the termination of a lease entered into under this chapter, the lessor corporation shall return to the school corporation any money held by the lessor corporation in excess of the amount needed to retire bonds issued under this chapter and to dissolve the lessor corporation.

(b) A school corporation shall deposit the money received under subsection (a) into its debt service fund or its capital projects fund.  
*As added by P.L.59-1988, SEC.11. Amended by P.L.41-1993, SEC.47.*